

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Derrick Shawn Turner, #309386,	)	C/A NO. 3:11-1789-CMC-JRM
	)	
Petitioner,	)	
	)	<b>OPINION and ORDER</b>
v.	)	
	)	
Leroy Cartledge, Warden,	)	
	)	
Respondent.	)	
_____	)	

This matter is before the court on Petitioner’s application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2254. On September 20, 2011, Respondent moved for summary judgment, arguing that Petitioner’s grounds for relief are procedurally defaulted and accordingly barred from federal habeas review in this court. In response to Respondent’s motion, Petitioner filed a motion to withdraw his petition, “asking this court to withdraw [the] Federal Habeas Corpus action . . . . [P]etitioner has not exhausted state remedies on claims presented before this court and also to concentrate on new PCR application brought forth in state court.” Mot. at 1 (ECF No. 14).

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pre-trial proceedings and a Report and Recommendation (“Report”). On May 14, 2012, the Magistrate Judge issued a Report recommending that Petitioner’s motion to dismiss be granted, that this petition be dismissed without prejudice, and that Respondent’s motion for summary judgment be mooted. In the alternative, the Magistrate Judge recommended that Respondent’s motion for summary judgment be granted, as Petitioner’s grounds for relief are procedurally barred from review by this court. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. The parties have filed no objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Petitioner’s motion to dismiss is granted. Respondent’s motion for summary judgment is moot, and this petition is dismissed without prejudice.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
June 7, 2012